IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JILL KRILL	:	CIVIL ACTION
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	:	
v.	:	
	:	
	:	
METROPOLITAN LIFE INSURANCE CO. and BELL ATLANTIC LONG TERM DISABILITY PLAN (NON-SALARIED EMPLOYEES)	:	NO. 99-1462

O'Neill February , 2000

MEMORANDUM

Plaintiff Jill Krill, a former employee of Bell Atlantic-Pennsylvania, Inc. ("Bell Atlantic") brings this civil action under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA"), against defendants Metropolitan Insurance Co. ("MetLife") and Bell Atlantic Long Term Disability Plan (Non-Salaried Employees) (the "Plan") to recover long term disability benefits to which she is allegedly entitled. Now pending are defendants' motion for summary judgment and plaintiff's response thereto. For the reasons discussed below, I shall grant the motion and enter judgment for defendants.

I.

The following facts are undisputed. On July 12, 1996, MetLife, the Plan administrator, received a long term disability claim from Jill Krill, a former Bell Atlantic customer service

representative. This claim package included a Personal Profile Evaluation completed by Ms. Krill and an Attending Physician's Statement ("APS") completed by Dr. Paul Gross, her psychiatrist. In the APS, Dr. Gross stated that Ms. Krill had suffered from major depression since 1994 and as a result of that condition was totally unable to work in any occupation. In response, MetLife wrote to Ms. Krill and requested that Dr. Gross and Scott Williamson, her therapist, forward a copy of her medical records and treatment history. MetLife also asked that Dr. Gross complete a psychological assessment evaluation by setting forth objective findings and/or psychological test results.

Under cover letter dated August 28, MetLife received a completed psychological assessment evaluation, lab results, and Mr. Williamson's notes, which were dated from May 20, 1996 through August 26. MetLife then referred Ms. Krill's file to an in-house disability nurse consultant for review. On September 27, the consultant reported that the medical information submitted was insufficient to support Ms. Krill's claim for benefits and advised MetLife to seek additional medical documentation. The consultant explained that the records submitted by Dr. Gross did not identify the precipitating cause of Ms Krill's alleged condition, nor include any psychological or cognitive test results, nor define a clear plan of treatment. In addition, the consultant noted that Ms. Krill's documented appearance and ability to socialize were inconsistent with a diagnosis of major depression.

On October 9, 1996, MetLife asked Dr. Gross for copies of psychological and/or cognitive test results which supported his diagnosis of major depression. MetLife also asked for current treatment plans, a prognosis, and a return to work date. Ms. Krill was informed by MetLife that it had requested this additional information.

By letter dated November 9, 1996, Dr. Gross and Mr. Williamson provided MetLife with a

treatment plan and a prognosis which was "guarded to poor." They explained that an expected return to work date could not be provided since plaintiff remained totally disabled. On December 31 MetLife received a summary of a Minnesota multiphasic personality disorder inventory ("MMPI") from Dr. Gross. MetLife then referred the entire file back to the nurse consultant.

After reviewing this new information, the consultant concluded that the medical information submitted by Ms. Krill remained incomplete and did not support her disability claim. In a report dated January 8, 1997, the consultant stated the MMPI summary was not a summary of Ms. Krill's performance on that test and was thus in no way specific to Ms. Krill. Instead, the consultant explained, the summary was a profile of characteristics exhibited by persons with MMPI results similar to those of Ms. Krill. The consultant recommended that MetLife: (1) obtain the MMPI itself as well as an actual summary; (2) confirm the frequency of Ms. Krill's visits to Dr. Gross and Mr. Williamson; and (3) procure copies of both Dr. Gross' and Mr. Williamson's notes. It was also recommended that after receiving all the requested information, MetLife refer Ms. Krill's file to Dr. Leonard Kessler for an independent medical review.

MetLife requested this additional information from Dr. Gross and Mr. Williamson on January 8 but received no response. As a result, MetLife administered Ms. Krill's claim based on the information it had in its possession. By letter dated January 30, 1997, MetLife informed Ms. Krill that it was denying her claim for long term disability benefits because it had concluded that the medical information submitted did not show that she was unable to perform any occupation. MetLife also stated that it had requested additional information from Dr. Gross but had never received a response. The letter also informed Ms. Krill of her administrative review rights under the Plan and under ERISA.

Through her attorney Ms. Krill requested an administrative review of the denial of her claim. In a letter dated February 4, Ms. Krill alleged that Dr. Gross had provided the necessary medical documentation and that this documentation clearly shows that she is unable to engage in any occupation or employment. MetLife acknowledged receipt of this request and advised Ms. Krill's attorney to submit any new medical information in the next twenty days.

Under cover letter dated February 19, Ms. Krill's attorney submitted what was described as "a complete copy of the various reports of Ms. Krill's] treating psychiatrist, Dr. Paul Gross." Def.'s Ex. 1 at 123. Among these reports was a psychiatric assessment performed by Dr. Paul Orr on January 23, 1996. In that report Dr. Orr wrote that:

> When questioned directly, [Ms. Krill] stated that she could not go back to the Customer Service position but that she would consider clerical work if 'I didn't have to be perfect and if they didn't criticize me.' She stated that unless she works full time, she cannot be placed in another position. . . . I would suggest that she be given a fixed time limit to arrange to return to work in a capacity other than phone service. My suggestion is that this would be form 6 weeks to 3 months.
>
> Her mental capacities, from my examination, are average to above average and do not present a limitation to her returning to full time work. However, emotionally, . . ., she has difficulty in accepting the concept of returning to her previous employment at Bell Atlantic.

Def.'s Ex. 1 at 141. MetLife then referred the matter to Dr. Kessler for an independent medical review.

In a letter dated March 4, 1997, Dr. Kessler concluded that Ms. Krill's medical information did not support a diagnosis of major depression. He stated that Dr. Orr's patient history and mental status findings appeared to be quite inconsistent with a diagnosis of mental depression. He also pointed out that Dr. Gross' progress note of July 29, 1996 describes Ms. Krill as "MILDLY depressed" and that Dr. Gross does not measure cognitive functions in the limited mental status

examination of the patient. Def.'s Ex. 1 at 118. In summation, Dr. Kessler wrote:

> It appears that the claimant left work in response to increasing demands being made. There is no evidence to clearly show that her level of depression had increased over the period of 1994 until July 1995 during which time she continued to work. When examined by Dr. Orr in January 1996, she showed no cognitive impairment, was active in her daily life, and showed traits of personality disorder. There is clear reluctance to return to the same work situation and lack of motivation to pursue other work. There is thus no evidence of severe, sustained psychiatric impairment resulting in marked functional limitations since July 1995.

Id. Based on Dr. Kessler's conclusions, MetLife informed Ms. Krill that it was upholding the decision to deny her claim in a letter dated March 17.

However, by letter dated March 17, Ms. Krill's attorney submitted additional information which had not been received by MetLife prior to its decision. Accordingly, MetLife sent this information to Dr. Kessler for review.

In a report dated April 4, 1997, Dr. Kessler informed MetLife that this additional information did not change his initial analysis. He reiterated that there was no support for a diagnosis of major depression. In doing so, he pointed out that there has been no psychotherapy addressing relevant occupation issues and that the claimant had recently been meeting with Dr. Gross only on a monthly basis, for about 15 to 20 minutes a session. In conclusion, Dr. Kessler wrote:

> It continues to appear that the claimant is avoiding a perceived adverse work environment and not obtaining treatment which addresses her need to overcome the obstacles at work, obtain vocational rehabilitation to find another job, or otherwise resolve the conflicts with her former employer with regard to her perception of the demands of the job. [....] The additional medical evidence does not reveal the presence of severe, ongoing, psychiatric illness which has resulted in marked functional limitations.

Def.'s Ex. 1 at 196-97. Based on this report, MetLife informed Ms. Krill by letter dated April 15

that it decision remained unchanged.

II.

Summary judgment is appropriate if the record shows that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Thus, a court's responsibility is not to resolve disputed issues of fact but to determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986). The moving party bears the initial burden of identifying those portions of the record which it believes indicate the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party must then point to specific facts demonstrating that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). It must raise "more than a mere scintilla of evidence in its favor" to defeat the summary judgment motion; it must produce evidence on which a jury could reasonably find for the non-moving party. Liberty Lobby, 477 U.S. at 251. Though the non-moving party may not rely upon unsupported allegations or mere suspicions, id, at 248, it is entitled to have all reasonable inferences drawn in its favor. Id, at 255.

II.

As the Supreme Court has explained, courts are guided by the principles of trust law in determining the appropriate standard of review for actions under ERISA. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 110 (1989). Like a trustee, an ERISA plan administrator or fiduciary "may be given power to construe doubtful or disputed terms, the interpretations of which will not be disturbed if reasonable." Id. Thus, an ERISA plan administrator's exercise of discretionary authority is not subject to review absent an abuse of discretion. Id. at 114-16.

This standard of review is narrow; a court may not substitute its own judgment for that of the plan administrator. Mitchell v. Eastman Kodak Co., 113 F.3d 433, 439 (3d Cir. 1997) Under the arbitrary and capricious standard, a court "may overturn a decision of a plan administrator only if it is 'without reason, unsupported by the evidence, or erroneous as a matter of law." Id., quoting Abnathya v. Hoffmann-LaRoche, Inc., 2 F.3d 40, 45 (3d Cir.1993).

Here, the Plan grants Administrators "discretionary and final authority to interpret the terms of the Plan." Def.'s Ex. 2(A), Bell Atlantic Long Term Disability Plan, Section 7.3. Section 10.1 of the Plan provides that Claims Fiduciaries and Appeals Fiduciaries "have the right, and the full discretion, as fiduciaries, to [i]nterpret the Plan based on the Plan's provisions and applicable law, [to] make factual determinations about claims arising under the Plan, and [to] determine whether a claimant is eligible for benefits." Def.'s Ex. 2(A). The Administrative Services Agreement ("ASA") between Bell Atlantic and MetLife names MetLife as the Administrator of the Plan. Def.'s Ex. 2(C). The ASA states that "the Administrator, as claims and appeals administrator, is a fiduciary to whom the Plan grants full discretion to interpret the Plan [and] to determine whether a claimant is eligible for benefits in accordance with the terms of the Plan." Id.

Plaintiff asks the Court to afford less deference to MetLife's determinations because, she alleges, MetLife acts as the insurer of the Plan. Though such a conflict of interest would be relevant, see Firestone, 489 U.S. at 116, plaintiff offers no evidence of such a conflict. Section 8 of the Plan states that "[o]n the Effective Date, the general assets of the Participating Companies are the sole source of benefit payments from the Plan." Def.'s Ex. 2(A). Section 8.1 of the ASA provides that that agreement is not a contract of insurance and that "the Administrator shall be under no obligation to pay from its own funds or insure any benefits properly payable under the Plan." Def.'s Ex. 2(C).

Finally, under the ASA MetLife is paid a specified fee per claim regardless of the claim's outcome.

Based on the evidence before me, I cannot find that its denial of plaintiff's disability claim was without reason, unsupported by the evidence, or erroneous as a matter of law. The term "disabled" is defined by Section 2 of the Plan as "the inability, due to sickness or injury documented by objective medical evidence, of the Participant to perform any job for which the Participant is (or may reasonably become) qualified by reason of education, training or experience, or any job that pays (on a full-time basis) 50% or more of the Participant's base pay." Def.'s Ex. 2(A). MetLife initially denied plaintiff's claim because she and her doctors failed to provide sufficient medical evidence such as psychological and cognitive test results. During the administrative review stage, MetLife had Dr. Kessler perform an independent medical review of plaintiff's claim. He examined the medical information submitted and concluded that there was insufficient evidence to support plaintiff's claim. In arriving at that conclusion, he relied upon specific findings and statements by plaintiff's physicians and upon plaintiff's treatment regimen. As a result MetLife upheld its initial denial of plaintiff's claim.

Though plaintiff clearly disagrees with MetLife's decision, she does not point to any evidence to show that that decision was arbitrary and capricious. In her response to defendant's motion, plaintiff merely asserts that "there was abundant evidence of [her] disability before the Plan administrator" and that "[t]he information contained in the various reports provided by Dr. Gross set forth the objective medical evidence and evaluations which support his diagnosis." Such unsupported allegations are clearly insufficient.

Since I find that MetLife's denial of plaintiff's disability claim was not arbitrary and capricious, I will grant defendants' motion. Summary judgment will be entered for defendants and

against plaintiff.

An appropriate Order follows.

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O R D E R

AND NOW this day of February, 2000, upon consideration of defendants' motion for summary judgment and plaintiff's response thereto, IT IS HEREBY ORDERED that defendants' motion is GRANTED. Judgment is entered in favor of defendants Metropolitan Insurance Co. and Bell Atlantic Long Term Disability Plan (Non-Salaried Employees) and against plaintiff Jill Krill.

THOMAS N. O'NEILL, JR., J.